IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 408 OF 2006
IN
NOTICE OF MOTION NO. 1324 OF 2006
IN
SUIT NO. 1158 OF 2006

Bhushan Mehra & Ors. ... Appellants

V/s.

ANA Development Pvt. Ltd. & Ors.... Respondents

Ms. Rajani Iyer with Mr. C.S. Belsare i/b. K. Ahsar & Co. for the appellants.
Mr. Ravi Kadam, Adv. General with Mr. P.R. Thatte for respondent No.1.
Mr. V.R. Dhond & Mr. Khatri i/b. Sujata Palav for the respondent No.2.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 19th August, 2006

P.C.

. It is not necessary to go into the detailed facts for the order to be passed. By order dated 28th April, 2006 the learned Judge was pleased to reject the interim relief as sought for by the appellants herein. In para 2, the learned Judge has prima facie recorded a finding that the impugned agreement is one for sale of the suit property. The learned Judge has also set out that, major part of the consideration has been received by the appellants herein and consequently dismissed the motion for ad-interim relief. The learned Judge also noted that the

possession of the property has been handed over to defendant No. 1.

2. The interim relief as sought for by the appellants herein before the learned Trial Judge was in terms of prayer clause (a). Admittedly, till date, there is no sale deed entered into between the appellants and respondent No.1. Without there being a conveyance between the appellants and respondent No. 1 in respect of sub-plot "C", the respondent No. 1 has conveyed sub-plot "C" to respondent No.2. In these circumstances, in the absence of title being conveyed in favour of respondent No. 1, no conveyance could have been entered by respondent No. 1 with respondent No. 2. The appellants herein are therefore entitled to ad-interim relief in terms of prayer clause (a)(i).

3. The issue as to whether the agreement to sell or is a development agreement requires consideration of various clauses including subsequent events. At this primafacie stage, it is not for us in appeal to decide whether the agreement is an agreement for development or agreement of sale. However, on behalf of respondent No. 1, it is pointed out that,

presently no development is being carried out on the sub-plot No. "C". If that be the case, there is no question of any urgency, for granting ad-interim relief in terms of prayer clause (a) (ii).

4. In so far as, prayer clause (c) is concerned, it will not be possible to restrain the respondents from carrying out negotiations with the tenants, if they are so entitled. But, so far as sub-plot "E" is concerned, the petitioners have 2/5th right in the said property. There is no agreement between the petitioners and respondent No. 1 for sale of sub-plot "E". In these circumstances, the appellants herein have made out prima facie case that in so far as sub-plot "E" is concerned, the respondent No. 1 could not have created or transfered third party right or any other right in so far as shares of the appellants are concerned. To that extent, the respondents are restrained from interferring in the rights of appellants in sub-plot "E", pending the hearing and final disposal of the motion.

5. For the aforesaid reasons, the ad-interim order dated 28th April, 2006 is set aside. There will be ad-interim relief in terms of prayer clause (a)(i)

as also prayer clause (a) (ix). The respondents are restrained from transferring, alienating or creating any third party rights, charge or mortgage or dealing with the petitioners' share in sub-plot "E" is concerned either by themselves or through any other person.

6. The appeal is disposed of accordingly.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]